

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY LLC, and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

SECOND DECLARATION OF
STUART W. YOTHERS IN SUPPORT
OF DEFENDANTS' OPPOSITION TO
MICROSOFT'S MOTIONS IN LIMINE

**NOTED ON MOTION CALENDAR:
Friday, October 19, 2012**

SECOND DECLARATION OF STUART W. YOTHERS IN
SUPPORT OF DEFENDANTS' OPPOSITION TO
MICROSOFT'S MOTIONS IN LIMINE
CASE NO. C10-1823-JLR

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1 I, STUART W. YOTHERS, declare as follows:

2 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola, Inc.
3 (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation
4 (collectively "Motorola"), Defendants in this action, and am a member in good standing of the
5 bars of the Commonwealth of Massachusetts and State of New York.

6 2. I submit this declaration in support of Defendants' Opposition to Microsoft's
7 Motions in Limine, submitted concurrently herewith. This declaration is entitled the "Second
8 Declaration of Stuart W. Yothers," and the attached exhibits begin with Exhibit 13, so as to avoid
9 confusing these exhibits with the twelve exhibits attached to the Declaration of Stuart W. Yothers
10 In Support of Defendants' Motions In Limine (Dkt. No. 457).

11 1. Attached as Exhibit 13 is a true and correct copy of excerpts from the Declaration
12 of Prof. David. J. Teece, dated January 30, 2012, filed in Germany in *General Instrument Corp. v.*
13 *Microsoft Corporation*, Docket No. 2 O 376/11, produced by Microsoft Corporation ("Microsoft")
14 in this action, and bearing production numbers MS-MOTO_1823_00002271028-33, 048-51, and
15 065 (filed under seal).

16 2. Attached as Exhibit 14 is a true and correct copy of Tab A ("Materials
17 Considered") of the August 10, 2012 Rebuttal Expert Report of Roger S. Smith (filed under seal).
18 The entire Smith Rebuttal Report, including Tab A, was previously submitted as Exhibit 63 to the
19 September 5, 2012 Second Declaration of Samuel L. Brenner In Support of Motorola Mobility's
20 and General Instrument's Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By
21 Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered sealed by the Court
22 (Dkt. No. 432).

23 3. Attached as Exhibit 15 is a true and correct copy of a letter from Peter J.
24 Uhlenhake, of Sidley Austin LLP, to Steven Pepe, of Ropes & Gray LLP, counsel to Motorola,
25 dated March 20, 2012, containing the subject line "Re: 10-CV-01823 – MS-
26 MOTO_1823_VOL037 of Microsoft Corporation's Production."

1 4. Attached as Exhibit 16 is a true and correct copy of a document entitled “Motorola
2 Mobility’s Memorandum in Opposition to Microsoft’s Motion for Partial Termination of the
3 Investigation,” filed on July 12, 2012, in *In The Matter of Certain Gaming and Entertainment*
4 *Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.), and
5 served on Microsoft on the same day (filed under seal).

6 5. Attached as Exhibit 17 is a true and correct copy of a document entitled “Surreply
7 by Complainants in Opposition to Microsoft’s Motion for Partial Termination of the
8 Investigation,” filed on August 16, 2012, in *In The Matter of Certain Gaming and Entertainment*
9 *Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.), and
10 served on Microsoft on the same day (filed under seal).

11 6. Attached as Exhibit 18 is a true and correct copy of an October 21, 2010 letter sent
12 by Kirk Dailey, Motorola’s Corporate Vice President of Intellectual Property, to Horatio E.
13 Gutierrez, Microsoft Corporation’s Corporate Vice President and Deputy General Counsel,
14 bearing production numbers MOTM_WASH1823_0398180-201. Attached to the letter is a list of
15 “Motorola Essential Properties, WLAN Annex.” The Annex lists 52 United States and 205 foreign
16 patents and patent applications. These documents were previously submitted to the Court as
17 Exhibit 8 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants’ Motion
18 for Partial Summary Judgment (Dkt. No. 230).

19 7. Attached as Exhibit 19 is a true and correct copy of the Declaration of K. McNeill
20 Taylor, Jr. in Support of Defendants’ Motion for Partial Summary Judgment, dated March 30,
21 2012 (filed under seal). This Declaration was previously submitted as Dkt. No. 232, and was
22 ordered sealed by the Court (Dkt. No. 294).

23 8. Attached as Exhibit 20 is a true and correct copy of excerpts of the Rebuttal
24 Testimony of Kirk Dailey, marked as Hearing Exhibit CX-778C and admitted into evidence in *In*
25 *The Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components*
26 *Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers

1 MOTM_WASH1823_0398598 and MOTM_WASH1823_0398624-625 (filed under seal). The
2 entire document from which these excerpts were taken was previously submitted to the Court as
3 Exhibit 4 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion
4 for Partial Summary Judgment (Dkt. No. 230), and was ordered sealed by the Court (Dkt. No.
5 294).

6 9. Attached as Exhibit 21 is a true and correct copy of selected pages from the 2011-2
7 Supplement of *Drafting License Agreements* (Michael A. Epstein & Frank L. Politano, eds., 4th
8 ed., Vol. 2, 2011). This document was previously submitted to the Court as Exhibit 13 to the
9 September 23, 2011 Declaration of Kevin J. Post (Dkt. No. 87), and as Exhibit 61 to the
10 September 5, 2012 Second Declaration of Samuel L. Brenner In Support of Motorola Mobility's
11 and General Instrument's Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By
12 Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392).

13 10. Attached as Exhibit 22 is a true and correct copy of selected pages from *Drafting*
14 *Patent License Agreements* (Brian G. Brunsvold & Dennis P. O'Reilley, eds., 5th ed., 2004). This
15 document was previously submitted to the Court as Exhibit 14 to the September 23, 2011
16 Declaration of Kevin J. Post (Dkt. No. 87), and as Exhibit 62 to the September 5, 2012 Second
17 Declaration of Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's
18 Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and
19 Dr. R. Sukumar (Dkt. No. 392).

20 11. Attached as Exhibit 23 is a true and correct copy of a document entitled "Letter of
21 Assurance for Essential Patent Claims," dated January 2012, and downloaded on September 4,
22 2012 from <https://development.standards.ieee.org/myproject/Public//mytools/mob/loa.pdf>. This
23 document was previously submitted to the Court as Exhibit 42 to the September 5, 2012 Second
24 Declaration of Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's
25 Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and
26 Dr. R. Sukumar (Dkt. No. 392).

1 12. Attached as Exhibit 24 is a true and correct copy of the September 2011 Patent
 2 License Agreement between Microsoft Corporation and Samsung Electronics Co. Ltd., bearing
 3 production numbers MS-MOTO_1823_00002244552-575 (filed under seal). This document was
 4 previously submitted to the Court as Exhibit 64 to the September 5, 2012 Second Declaration of
 5 Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's Opposition to
 6 Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar
 7 (Dkt. No. 392), and was ordered sealed by the Court (Dkt. No. 432).

8 13. Attached as Exhibit 25 is a true and correct copy of an April 4, 2012 letter from
 9 Arthur W. Harrigan, Jr., of Danielson Harrigan Leyh & Tollefson LLP, counsel for Microsoft, to
 10 Ralph Palumbo, of the Summit Law Group, and Jesse J. Jenner, of Ropes & Gray LLP, counsel
 11 for Motorola (filed under seal).

12 14. Attached as Exhibit 26 is a true and correct copy of an April 4, 2012 letter from
 13 Ralph Palumbo, of the Summit Law Group, counsel for Motorola, to Arthur W. Harrigan, Jr., of
 14 Danielson Harrigan Leyh & Tollefson LLP, counsel for Microsoft (filed under seal).

15 15. Attached as Exhibit 27 is a true and correct copy of the March 20, 2012 deposition
 16 of K. McNeill Taylor, Jr., which was designated Highly Confidential and which was taken under
 17 oath in New York, NY (filed under seal). This document was previously submitted to the Court as
 18 Exhibit 1 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion
 19 for Partial Summary Judgment (Dkt. No. 230), and was ordered sealed by the Court (Dkt. No.
 20 294).

21 16. Attached as Exhibit 28 is a true and correct copy of selected pages from the
 22 transcript of the January 20, 2012 hearing held in *In The Matter of Certain Gaming and*
 23 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
 24 (U.S.I.T.C.) by ALJ Shaw, which reproduces the confidential sworn testimony given by Kirk W.
 25 Dailey and bears non-consecutive production numbers MOTM_WASH1823_0401216-427 (filed
 26 under seal). This document was previously submitted to the Court as Exhibit 2 to the March 30,

1 2012 Declaration of Kevin J. Post in Support of Defendants' Motion for Partial Summary
2 Judgment (Dkt. No. 230), and was ordered sealed by the Court (Dkt. No. 294).

3 17. Attached as Exhibit 29 is a true and correct copy of a document entitled "Annex 1"
4 and "Chronology of MMI and Microsoft negotiations and litigation," submitted as Annex 1 to
5 Motorola's Response to the European Commission (filed under seal).

6 18. Attached as Exhibit 30 is a true and correct copy of a document bearing production
7 number MS-MOTO_1823_00002288984 (filed under seal). This document was previously
8 submitted to the Court as Exhibit 26 to the March 30, 2012 Declaration of Kevin J. Post in
9 Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230), and was ordered
10 sealed by the Court (Dkt. No. 294).

11 19. Attached as Exhibit 31 is a true and correct copy of a document entitled
12 "Complaint on Behalf of Microsoft to the European Commission" and "Google/Motorola Mobility
13 Inc.'s Infringements of Article 102 TFEU," dated February 22, 2012, and prepared by Covington
14 & Burling LLP (filed under seal). (This document is also marked "Non-confidential vis-à-vis
15 Motorola Mobility," and has apparently been redacted by Covington & Burling LLP.)

16 20. Attached as Exhibit 32 is a true and correct copy of a letter, dated March 9, 2012,
17 from Damian G. Didden, of Wachtell, Lipton, Rosen & Katz LLP, counsel to Motorola, to Brad
18 Smith, Microsoft's General Counsel and Executive Vice President, Legal and Corporate Affairs
19 (filed under seal).

20 21. Attached as Exhibit 33 is a true and correct copy of the Guidelines for
21 Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC, dated April 23, 2012,
22 bearing production numbers MOTM_WASH1823_602801-24.

23 22. Attached as Exhibit 34 is a true and correct copy of the transcript of the August 17,
24 2012 deposition of Michael Orchard, taken under oath in Chicago, Illinois (filed under seal).

25 23. Attached as Exhibit 35 is a true and correct copy of the August 10, 2012 Rebuttal
26 Expert Report of Timothy Drabik (filed under seal).

24. Attached as Exhibit 36 is a true and correct copy of selected pages from the transcript of the deposition of David A. Heiner, which was taken under oath in Seattle, Washington, on March 28, 2012. This document was previously submitted to the Court as Exhibit 28 to the Second Declaration of Kevin J. Post in Support of Defendants' Opposition to Microsoft's Motion for Partial Summary Judgment of Breach of Contract (Dkt. No. 273).

25. Attached as Exhibit 37 is a true and correct copy of the transcript of the deposition of Horacio E. Gutierrez, which was designated as Highly Confidential – Attorneys' Eyes Only and taken under oath in Seattle, Washington, on April 4, 2012 (filed under seal). This document was previously submitted to the Court as Exhibit 32 to the Second Declaration of Kevin J. Post in Support of Defendants' Opposition to Microsoft's Motion for Partial Summary Judgment of Breach of Contract (Dkt. No. 273), and was ordered sealed by the Court (Dkt. No. 336).

26. Attached as Exhibit 38 is a is a true and correct copy of the June 1, 2010 Patent Cross License Agreement entered into between Motorola, Inc. and Research In Motion Ltd., marked as Hearing Exhibit CX-93C and admitted into evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0397002-96 (filed under seal). This document was previously submitted to the Court as Exhibit 5 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230), and was ordered sealed by the Court (Dkt. No. 294).

27. Attached as Exhibit 39 is a true and correct copy of excerpts of the transcript of the deposition of Matthew R. Lynde, Ph.D., which was taken under oath in San Francisco, California, on August 31, 2012 (filed under seal). The entire document from which these excerpts are drawn was previously submitted to the Court as Exhibit 38 to the September 5, 2012 Second Declaration of Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered sealed by the Court (Dkt. No. 432).

1 I declare under penalty of perjury of the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

3 DATED this 15th day of October, 2012.

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5 /s/ Stuart W. Yothers

6 Stuart W. Yothers
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 15th day of October, 2012.

/s/ Marcia A. Ripley
Marcia A. Ripley